

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**DEPUY MITEK, INC.,
a Massachusetts Corporation,**

Plaintiff,

v.

**ARTHREX, INC.,
a Delaware Corporation and**

**PEARSALLS LTD.
a Private Limited Company of
the United Kingdom**

Defendants.

Civil No. 04-12457 PBS

**DePuy Mitek, Inc.’s Motion to Preclude Arthrex, Inc. and Pearsalls Ltd. From
“Supplementing” Their Expert Reports and Depositions**

Plaintiff DePuy Mitek, Inc. (“Mitek”) move to preclude Defendants Arthrex, Inc. and Pearsalls Ltd. (collectively, “Arthrex”) from “supplementing” their expert reports and depositions under FED.R.CIV.P. 26(e)(1). As expert discovery was closing, Arthrex contended on July 26, 2006 for the first time that data generated by one of its experts months ago “*may have been*” affected by a computer virus. Arthrex also asserted that it would be “supplementing” its expert reports because of this virus. But Arthrex has offered no proof to substantiate its virus allegations or to satisfy the limited supplementation exception of FED.R.CIV.P. 26(e)(1). Mitek believes that Arthrex really seeks to use these virus allegations as an excuse to redo expert discovery because it is unhappy with its experts’ performance. Permitting Arthrex to simply redo expert discovery based on an unsubstantiated claim of a computer virus, now that expert discovery is closed, will severely complicate this case and prejudice Mitek. Accordingly, it should not be permitted absent proof of this computer virus.

A memorandum in support of this motion is being filed currently herewith.

Dated: August 9, 2006

DEPUY MITEK, INC.,

By its attorneys,

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